

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HELEN HARDINGER, Executrix)	
of the Estate of RONALD C.)	
HARDINGER,)	Civil Action No. 04-382
)	
Plaintiff,)	Judge McVerry
)	Magistrate Judge Caiazza
v.)	
)	
EQUITABLE RESOURCES, INC.,)	
and EQUITRANS, L.P.,)	
)	
Defendants.)	

MEMORANDUM ORDER

On March 12, 2004, this case was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On January 31, 2006, the magistrate judge issued a Report (Document No. 32) recommending that the District Court deny the Defendants' Motion for Summary Judgment (Document No. 21). Service of the Report and Recommendation was made on the parties, and the Defendants filed objections on February 16, 2006. *See* Document No. 33.

In their objections, the Defendants argue that there is inconsistency between the magistrate judge's conclusion that the Plaintiff's claims fail under the *McDonnell Douglas* standards but survive under *Price Waterhouse*. *See* Objections at 1-3 (citing case law suggesting *Price Waterhouse* analysis is more demanding than *McDonnell Douglas*). The magistrate judge's comments regarding *McDonnell Douglas*, however, were both qualified and *dicta*. *See* Report at 8-9 (noting Plaintiff "would have a difficult time getting this case to a jury" based on

pretext evidence alone); *see also id.* at 8-11 (recommending denial of summary judgment under *Price Waterhouse*, not grant of summary judgment regarding pretext theory).

The District Court finds more telling the magistrate judge's comments regarding the second prong of the *Price Waterhouse* inquiry, which dictates that once sufficient "direct" evidence is presented, "the employer [attempts to] prove . . . it would have fired the plaintiff even if it had not considered . . . age." *See* Report at 11 (citations omitted). The magistrate judge opined, and the District Court agrees, that "[w]hile the discussions . . . regarding the lack of credible pretext evidence would apply with equal force" under *Price Waterhouse*, "the court cannot quite say that no reasonable juror could find in the Plaintiff's favor." *See id.* (emphasis added); *see also id.* ("on summary judgment, [the] reviewing court may not make credibility determinations or weigh the evidence") (citation omitted).

Thus, after a *de novo* review of the pleadings and filings in this case, together with the Magistrate Judge's Report and Recommendation, Defendants' Objections and Plaintiff's Response thereto, the following Order is entered:

AND NOW, on this 8th day of March, 2006, it is hereby **ORDERED** that the Defendants' Motion for Summary Judgment (Document No. 21) is **DENIED**. The Report and Recommendation dated January 31, 2006 is adopted as the opinion of the District Court, as supplemented above.

BY THE COURT:

s/ Terrence F. McVerry
United States District Judge

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